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FEDERAL COURT
COUR FÉDÉRALE
DÉPOSÉ
July 24, 2026
24 juillet 2026
Jessica Lorch
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Court File No.

FEDERAL COURT

B E T W E E N:

NATION ANISHNABE DU LAC SIMON

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Issued on: July 24, 2026
Issued by: Jessica Lorch (Registry Officer)
Address of Local Office: 90 Sparks Street/rue Sparks Ottawa, Ontario K1P 5R5

Dated: July 24, 2026

Issued by: _____
(Registry Officer)

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TO: Marie-Josée Hogue
Deputy Attorney General of Canada
Department of Justice
Civil Litigation Section
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APPLICATION

1. This is an application for judicial review of the decision of the Government of Canada ("Canada"), and more particularly of the Governor in Council ("GIC"), to not make an emergency order under s. 80(1) of the *Species at Risk Act* ("SARA") to protect boreal caribou and its habitat in Val-d'Or, Charlevoix, and Pipmuacan (the "Decision"). The Decision was communicated to the Applicant on June 29, 2026, and announced publicly on June 30, 2026.

2. The Minister of Environment and Climate Change (the "Minister") in 2024 recommended that the GIC make an emergency order to save the boreal caribou from an "imminent threat" of extinction. Accordingly, the Minister was directed to develop an emergency order to prohibit activities that adversely impact the species' "critical habitat" as defined in SARA. But for reasons of political expediency, in complete disregard for the object and purpose of SARA, and despite a clear obligation to act, the GIC reversed course and declined to make the emergency order. Instead, the Minister made a "funding agreement" with Québec, purportedly to promote caribou conservation (the "Funding Agreement").

3. The Funding Agreement does not promote the conservation of caribou. It is no substitute for an emergency order, which is necessary to promote the survival of boreal caribou that the Applicant relies on for the exercise of their rights, culture, and way of life protected by s. 35 of the *Constitution Act, 1982*. Without an emergency order, the boreal caribou, and with them the Applicant's rights, are at an extremely elevated risk of extinction.

The Applicant applies for:

4. A declaration that the decision to not make an emergency order under s. 80(1) of SARA protecting boreal caribou and their critical habitat (defined above as the "Decision") is unreasonable;

5. A declaration that the two-year delay between the Minister's recommendation that the GIC make an emergency order, and the Decision is unlawful;

6. A declaration that the Crown's unilateral reversal and failure to make an emergency order to prevent the extinction of the boreal caribou population in the Val d'Or critical habitat, which is central to the Applicant's asserted right to hunt protected by s. 35 of the *Constitution Act, 1982*, is inconsistent with the honour of the Crown;

7. A declaration that the Crown breached its fiduciary duty to the Applicant by failing to exercise its statutory discretion with ordinary diligence and a view to the protection and recovery of the boreal caribou and preservation of the Applicant's asserted s. 35 right to harvest;

8. A declaration that the Crown's duty of procedural fairness, duty to consult and accommodate, and duty to act consistently with the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"), were violated by Canada's failure to consult the Applicant about the Decision, including the use of the Funding Agreement in lieu of an emergency order;

9. An order directing Canada to:

    a. Meaningfully consult with the Applicant within 60 days and to enact an emergency order protecting the Val d'Or caribou critical habitat; or,

    b. In the alternative (i) reconsider the making of an emergency order in the Val d'Or critical habitat in accordance with the reasons of this Court, (ii) meaningfully consult the Applicant, and (iii) render a fresh decision within 60 days;

10. An order that the Court will remain seized of this matter to give direction if necessary until the enactment of the emergency order;

11. Costs; and

12. Any other relief that counsel may request and the Court finds just and appropriate.

The grounds for the application are:

The parties

13. The Applicant is the Nation Anishinabe du Lac Simon ("NALS"), sometimes also called the Conseil de la Nation Anishinabe de Lac Simon. NALS is an Algonquin First Nation community and a "band" under the *Indian Ac*t.

14. Together with five other Algonquin Anishinabeg bands, NALS is a member of the Algonquin Anishinabeg Nation Tribal Council Inc ("AANTC"), which is a corporation incorporated under the *Canada Not-for-Profit Corporations Act* and an "Indigenous governing body" as that term is defined in the *Department of Crown-Indigenous Relations and Northern Affairs Act*. NALS is also a member of the Assembly of First Nations of Québec and Labrador ("AFNQL").

15. The Applicant possesses aboriginal and inherent rights under s. 35 of the *Constitution Act*, *1982*, and rights under the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP").

16. The Respondent is the Attorney General of Canada, acting for the Crown, including, without limitation, the Governor in Council.

The Applicants' Aboriginal rights and the Crown's knowledge

17. The Algonquin people (Algonquin Anishinabeg) who are members of NALS are Indigenous people who have occupied their homeland called Nitakinan in the Ottawa River watershed since time immemorial, and long before European contact and occupation. The Aboriginal rights and title of the Algonquin Anishinabeg in Nitakinan have never been extinguished or ceded

by treaty, and have many times been asserted to the Crown. The Crown is aware of the Nitakinan claim.

18. The ancestral and living Algonquin Anishinabeg have always hunted boreal caribou in Nitakinan. Hunting caribou is a practice, custom and tradition integral to the distinctive rights, culture, and way of life of the Algonquin Anishinabeg. But because of their scarcity, NALS members began voluntarily observing a moratorium on hunting caribou about 30 years ago, consistent with their responsibilities to steward the resources they rely on for the exercise of their rights.

Longstanding concerns about the conservation of boreal caribou

19. The populations of boreal caribou in Nitakinan, and particularly within the Val d'Or critical habitat that the Applicant formerly hunted, are in danger because Canada and Québec have failed to protect them from the devastating impacts of forestry and other human activities for decades.

20. In 2003, the Respondent first listed boreal caribou under SARA as "threatened", a status that it re-examined and re-confirmed in 2014-2015.

21. "Threatened" species have declining populations across their range and are at risk of becoming endangered, extirpated or extinct if nothing is done to protect and recover them. Designating the caribou as "threatened" in turn makes it a criminal offence under SARA to hunt and kill them.

22. On January 24, 2018, the Applicant, represented by the Chief of NALS, wrote a letter to the Minister requesting her intervention to maintain the caribou population and critical habitat in the Val d'Or region. The Chief expressly invoked the Supreme Court's *Sparrow* decision and the Applicant's rights under s. 35 of the *Constitution Act*, *1982*, and requested an emergency order under s. 80 of SARA. The Respondent's staff acknowledged the Chief's request by return correspondence on March 13,

2018.

23. About a month later, on April 9, 2018, the Minister wrote to the Chief of NALS to explore the possibility of a stewardship agreement with it under s. 11 of SARA which acknowledged: “l'importance particulière de la harde de Val-d'Or pour le Conseil de la Nation Anishnabe de Lac Simon.” The Respondent did not pursue the possibility of a collaboration agreement and did not respond to the Chief’s request for an emergency order.

24. In 2020, the Respondent published an updated boreal caribou recovery strategy under s. 37 of SARA (the original version was published 2012). The strategy identifies a map area of “critical habitat” for the recovery of the Val d’Or population (defined in SARA as “habitat that is necessary for the survival or recovery”). The strategy also established “a minimum threshold” for management purposes, which is that 65% of the caribou’s habitat ought to be undisturbed, since at this level “there remains a significant risk (40%) that a local population will not be self-sustaining.”

25. At the time of the recovery strategy in 2020, the Respondent judged that only 35% of the Val d’Or population’s habitat was undisturbed, well below the minimum threshold of 65% that needed to remain undisturbed. On the Crown’s own methodology for assessing risk, there is *more* than a “significant risk” of the Val d’Or population failing to be self-sustaining. A population that is not self-sustaining will inevitably become extinct.

26. In 2021, the Government of Québec also assessed the state of the boreal caribou, and concluded that “Les indicateurs d’abondance, de tendance démographique et de recrutement indiquent que la population de Val-d’Or fait face à un risque extrêmement élevé d’extinction à court terme.”

27. In 2024, the Respondent acknowledged in its Imminent Threat Assessment (defined below) that boreal caribou “require large areas of undisturbed, interconnected old-growth coniferous forest to spatially separate

themselves from predators," and that the threats from logging and the road network "is intensifying" in the range of the Val d'Or population that NALS members traditionally hunted.

Minister makes imminent threat assessment

28. Based on long-term and ongoing threats to the survival of boreal caribou, in May 2024, the Minister issued an "imminent threat assessment" for that species (the "Imminent Threat Assessment"). The Imminent Threat Assessment identified three caribou ranges most at risk: Val-d'Or, Charlevoix, and Pipmuacan. The Val-d'Or population is in captivity and no longer in the wild and had just nine individuals remaining; the Charlevoix population had just 31, and the Pipmuacan had just 225.

29. The Imminent Threat Assessment included a recommendation under s. 80(2) of SARA that the GIC make an "emergency order" for the protection of boreal caribou because they face imminent threats to their recovery caused by logging and road building. The Minister's Imminent Threat Assessment stated that "the Val-d'Or population has already fallen below the quasi-extinction threshold" and foresaw that conservation measures already in place were insufficient and would make "recovery of the species highly unlikely or impossible":

> The measures currently in place cannot help to prevent the expected impacts of the threats examined as part of this assessment, specifically logging and road construction planned in the short term (that is, in the 2023 to 2024 PRANs), and these threats could render the recovery of the species highly unlikely or impossible. Consequently, additional measures are needed to address these threats. Boreal caribou are found in mature boreal forest ecosystems that take decades to recover from disturbance. Reversing harmful ecological processes that are detrimental to boreal caribou (for example, habitat degradation and loss, increase in predator and alternate prey populations) often requires time frames in excess of 50 to 100 years. In the meantime, it is critical to stem the increase in the level of habitat disturbance by avoiding or mitigating activities that pose a threat

> to the species. This is essential in order to avoid further decreasing the likelihood that populations that are not self-sustaining at present will achieve self-sustaining status. As a result of ongoing disturbance, it will take longer to restore habitat, and even greater efforts will be required to maintain the populations until the habitat recovers to the point where it once again has suitable characteristics for the species.

30. The Imminent Threat Assessment explained that achieving the "recovery goal […] would allow for local population levels sufficient to sustain traditional Indigenous harvesting activities, consistent with existing Aboriginal and treaty rights."

31. The Minister wrote a personal letter to the Chief of NALS dated June 17, 2024, about his Imminent Threat Assessment in which he stated:

> … j'ai formé l'opinion que le caribou boréal fait face à des menaces imminentes pour son rétablissement, puisqu'une population locale au Québec (Val-d'Or) a déjà franchi le seuil de quasi-disparition (10 femelles en état de se reproduire) … et ce, alors que l'impact d'au moins deux menaces (l'exploitation forestière et le réseau de chemins multiusages) s'intensifie. Cela rendrait le rétablissement de l'espèce très improbable, voire impossible.

Minister gives notice that it is developing an emergency order

32. On June 19, 2024, the "the Government of Canada directed the Minister to proceed with the development of an emergency order that will protect portions of habitat in the three most at risk ranges in Québec, namely Val-d'Or, Charlevoix and Pipmuacan."

33. On June 29, 2024, the Minister gave notice in the *Canada Gazette* of its "intent to develop an emergency order under section 80 of [SARA] to address the imminent threats to the recovery of boreal caribou in selected ranges in the province of Québec due to habitat destruction caused by the increase in logging due to industrial activities and road building." The Gazette entry said:

> The purpose of the discussion paper is to support engagement and consultation with the Government of Québec, Québec First Nations, stakeholders, and interested parties on the proposed scope for an emergency order within or near three boreal caribou ranges in Québec (Val-d'Or, Charlevoix, and Pipmuacan), based on the findings of the imminent threat assessment. The consultation is intended to help (1) inform the exact area to be covered by the order and the activities that would be prohibited, and (2) identify and mitigate, to the extent possible, potential impacts of the emergency order.

34. The Minister also informed the Applicant that "a portée des mesures actuellement mises en œuvre ou prévues [par Québec] pour protéger ou restaurer l'habitat de l'espèce est jugée insuffisante pour contrer les impacts des principales menaces évaluées," making federal regulation necessary.

35. In June 2024, the Minister opened a consultation with the Applicant and other First Nations and sought their submissions "on the proposed scope for an emergency order within or near" the Val-d'Or population range. The Minister simultaneously published a Discussion Paper containing these questions:

- Would the proposed scope of the emergency order be inconsistent with your rights under the United Nations Declaration on the Rights of Indigenous Peoples? If so, please provide details.
- Would the proposed scope of the emergency order support your rights under the United Nations Declaration on the Rights of Indigenous Peoples? If so, please provide details.

36. The Applicant made submissions in support of an emergency order and its right to hunt on September 13, 2024.

37. The Minister's consultation process closed on September 15, 2024. But rather than acting with the haste and dispatch required by the avowed imminent threat, the Minister and/or GIC made no decision. Instead, the Minister launched a second, duplicative and unnecessary round of consultations in December 2024 in which it admitted the advantages of an

emergency order for First Nations and their self-determination. The Applicant made further submissions in support of an emergency order and the significance to its governance, social and economic development, culture, and rights on January 31, 2025.

38. In February 2025, Environment and Climate Change Canada ("ECCC") assessed the current and planned caribou conservation actions in Québec and again concluded that they were insufficient to address the imminent threats to the species.

Canada drags its feet then declines to make emergency order

39. The Minister and/or GIC then took no steps for over a year.

40. In January and February 2026, the Applicant, other First Nations, and AFNQL wrote to the Minister demanding an urgent meeting to discuss the emergency order and reminding her of her constitutional and UNDRIP obligations.

41. The Minister ignored the Applicant's correspondence for about half a year.

42. Then, finally, on June 29, 2026, the Minister met with the Chief of NALS, other First Nations Chiefs, and AFNQL, and told them that no emergency order was forthcoming, and that instead, the Minister would make a funding agreement with Québec for unspecified activities in part related to caribou. This was the first time the Applicant heard that (i) there would be no emergency order; and (ii) that instead, the Minister would make a funding agreement with Québec.

43. Québec's Minister of the Environment, who also attended the June 29 meeting, stated that an upcoming provincial election influenced the decision. This was reiterated by ECCC during a roundtable meeting on July 22, in which ECCC explained that the policy change happened because of a change in the political context in Québec, international political factors,

and the upcoming provincial election.

44. Later on June 29, the Minister sent the Applicant a letter confirming that no emergency order would be made.

45. The next morning, June 30, the Respondent reiterated its Decision in a meeting of an ECCC-First Nations roundtable. Later in the day, Canada and Québec together publicly announced the Funding Agreement between Québec and Canada to support Québec's implementation of its conservation, monitoring and protection measures for caribou populations.

The Funding Agreement is deficient

46. The Funding Agreement is deficient and not a substitute for an emergency order. Among other things:

    a. The Funding Agreement places absolutely no limits on the logging and road building activities that the Minister determined in May 2024 are the "imminent threats" to the recovery of boreal caribou;

    b. The Funding Agreement has a duration of under five years, compared to the 50-100 years that the Minister admits is necessary to recover caribou habitat;

    c. The Funding Agreement does not require Quebec to spend the funds transferred thereunder on caribou conservation in the habitats identified by the Minister as facing imminent threat.

    d. The Funding Agreement abandons federal authority and constitutional duties by completely outsourcing Indigenous consultation and accommodation to Québec. An information note provided by the Minister states: "La responsabilité de consulter les Premières Nations dans la mise en œuvre des mesures

> prévues à l'Accord relève principalement du gouvernement du Québec."

47. This single paragraph is the Minister's only response to its discussions with the Applicant and other First Nations:

> During the consultation period ECCC met with First Nations through the ECCC-First Nations' round table and related working groups to ensure the cost-benefit analysis of an emergency order accurately incorporated their concerns and information provided. ECCC considered the information received from First Nations in determining how to minimize any impacts that a potential emergency order may have had on their ability to access and occupy their traditional territories.

The Decision is unreasonable

48. The process leading to the Decision was neither transparent nor intelligible. Among other things, there was no basis for Canada's sudden about-face and decision to not make the emergency order.

49. The Decision cannot be justified in light of the factual and legal constraints that applied, including, without limitation, the Imminent Threat Assessment and the determination of what is required to protect boreal caribou, the statutory purpose of SARA, UNDRIP Articles 19, 26 and 29, and the Minister's consultations with the Applicant. To the extent Canada relied on the Funding Agreement as a basis for not proceeding in a timely manner with the emergency order, this too was unreasonable.

The Decision breaches the honour of the Crown

50. The Minister has acknowledged "existing Aboriginal and treaty rights" to harvest caribou and that the Val d'Or boreal caribou population is at significant risk of extinction if new and/or additional steps are not taken. The extinction of caribou would lead to the *de facto* extinguishment of those rights. In the circumstances, Canada was required to take steps to forestall

that possibility, including, without limitation, issuing an emergency order under s. 80(1) of SARA and taking other steps to diligently protect the Applicant's right to its harvesting-based way of life. Indeed, the Canada announced its resolve to do so, but failed to follow through on that commitment. That failure breaches the honour of the Crown.

The Decision breaches the Crown's fiduciary duty

51. The relationship between the Crown and the Applicant is fiduciary in nature. The Applicant's asserted right to harvest boreal caribou in Nitakinan is a specific and cognizable Aboriginal interest. The Crown has long known of and acknowledged that interest. The Crown has assumed discretionary control over that interest. Parliament has reserved to the federal Crown alone the power under s. 80 of SARA to protect the species' critical habitat. The entire Val d'Or caribou herd are now penned in Crown captivity. The Applicant is dependent upon, and peculiarly vulnerable to, the Crown's exercise of its discretion under s. 80 to protect the Val d'Or critical habitat in a state that the herd could be rewilded, recovered, and again hunted. The Respondent has a duty to protect the Applicant's asserted right to harvest boreal caribou in Nitakinan. In deciding not to issue an emergency order, the Crown failed to act with ordinary diligence in regard to the protection of the Applicant's asserted right.

The Decision breached the duty to consult and/or UNDRIPA

52. The Decision to not proceed with an emergency order and to instead make the Funding Agreement was a high-level strategic decision that triggered the Crown's duty to consult. The Crown breached that duty by failing to consult the Applicant. At no time before the Decision did Canada (i) give the Applicant prior notice of that policy change and the substance of the funding agreement; (ii) meaningfully and deeply consult the Applicant, or; (iii) seek the free, prior, and informed consent of the Applicant.

53. The Crown failed to carry out robust, meaningful consultation and accommodation that is informed by Indigenous perspectives, laws, knowledges, and practices, with the goal of the First Nation's consent, as required by UNDRIP. UNDRIP has been brought into Canadian law by the *United Nations Declaration on the Rights of Indigenous Peoples Act*, and the UNDRIP right to consultation is binding international law. UNDRIP and the UNDRIP right to consultation attract the presumption of conformity. The duty to consult, as a constitutional doctrine, must be interpreted consistently with these rights. Canada failed to do so here.

54. The Applicant had legitimate expectations based on representations made by the Minister and/or its representatives that the Applicant would be consulted if there was to be a change in policy and no emergency order made.

The Court should direct Canada to make an emergency order

55. Under the circumstances and in the constitutional context, there is only one lawful and reasonable outcome: the issuance of an emergency order to prevent the extinction or extirpation of boreal caribou in Val-d'Or, Charlevoix, and Pipmuacan. This is an outcome that the Minister acknowledges is inevitable without additional measures, and which would permanently and unconstitutionally extinguish the Applicant's s. 35 right to hunt. The making of an emergency order is therefore the only decision the GIC could lawfully, constitutionally, and/or reasonably make, and the Court should direct this outcome.

Supervisory jurisdiction is appropriate

56. Canada should be required to report to the Court on its implementation of any order made by this Court. A court retaining supervisory jurisdiction is a rare and extraordinary remedy, but warranted here. Canada has a 23-year history of acting unlawfully by not taking expedient steps to protect caribou

since they were listed under SARA as “threatened” in 2003, and along with them the Applicant’s asserted right to hunt, even as their numbers in Val d’Or have plummeted into the single digits. Canada also acknowledges their importance to the exercise of Aboriginal rights and the real risk of their extinction or extirpation. There is a material risk of ongoing harm if implementation is delayed.

Further grounds of the application are:

57. *Species at Risk Act*, SC 2002, c. 29;

58. *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c. 14;

59. *Constitution Act,* 1982*;*

60. *Federal Courts Act*, RSC 1985, c F-7, as amended, ss. 18 and 18.1; and

61. Such further and other grounds as counsel may advise and this Court may permit.

This application will be supported by the following material:

1. The Affidavits of Chief Lucien Wabanonik, Saku Niquay, or other affiant(s), to be sworn and filed in accordance with the *Federal Courts Rules*;

2. A copy of the Rule 317 record; and

3. Such additional materials as counsel may advise and this Honourable Court may permit.

4. Pursuant to Rules 317 and 318, the Applicant requests that the Respondent send a certified copy of the decision record, including but not limited to the following material that is not in the Applicant’s possession but is in the possession of the Respondent:

i. Deliberations respecting whether to make an emergency order;

ii. Deliberations respecting the s. 35 duty to consult in this matter, both generally, and with respect to the Applicant's submissions during the consultation process on the intended emergency order;

iii. Deliberations respecting the funding agreement in lieu of the emergency order; and

iv. Deliberations giving rise to the imminent threat assessment.

Date: July 24, 2026

Professor Amir Attaran, University of Ottawa and Algonquin Anishinabeg Nation Tribal Council
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Court File No.

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